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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/975,474	10/11/2001	Michael Guess	020366-102100US	9742
83809 7590 05/04/2009 Qwest Communications International Inc. 1801 California Street, # 900 Denver, CO 80202				
EXAMINER				
NGO, NGUYEN HOANG				
ART UNIT		PAPER NUMBER		
2416				
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05/04/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/975,474

Applicant(s)

GUESS ET AL.

Examiner

NGUYEN NGO

Art Unit

2416

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 14-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 14-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/IC)
- Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

This communication is in response to the amendment of 4/6/2009. All changes made to the Claims have been entered. Accordingly, Claims 1-12, 14-21 are currently pending in the application.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 21 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.
3. Claim 21 states wherein the plurality of end devices comprises one of non-ESRP-aware devices and non-ExtremeWare manufactured devices. However the term non-ESRP-aware and non-ExtremeWare are nowhere to be found in the Specification. Applicant is urged to particularly point out such subject matter.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 1-12, 14-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over ExtremeWare Software User Guide, by Extreme Networks, Inc, in view of Jain et al. (US 6330229), hereinafter referred to as ExtremeWare and Jain.

Regarding claim 1, 3, 10, 12, 20, ExtremeWare discloses a network failover transition system (ESRP that allows multiple switches to provide redundant routing services to users, Chapter 10, Page 10-1 and figure 10-7 on 10-11) comprising;

a first switch adapted to transition between a master switch and a standby switch (master switch behavior and standby switch behavior, 10-5-10-6);

a second switch adapted to transition between a master switch and a standby switch, wherein said second switch is said standby switch when said first switch is said master switch, and said second switch is said master switch when said first switch is said standby switch (the master ESRP switch relinquishes status as master, and remains in standby mode for as long as the tracking mechanism continues to fail, page 10-4 and 10-5 and 10-6 and figure 10-7 and figure 10-17);

a plurality of end devices (seen from figure 10-18) comprising a forwarding database (FDB) and adapted to communicate with the first switch and the second switch through a VLAN (the summit switches, being ESRP-aware, allow traffic within the VLAN to fail over quickly, as they sense when a master/slave transition occurs and flush FDB entries associated with the uplinks to the ESRP-enabled BlackDiamond switches, 10-17 and 10-18 and figure 10-8),

ExtremeWare however fails to specifically disclose the master switch being configured, upon a detection of a network failure, to notify the plurality of end devices to flush the forwarding database and rebroadcast for a new path over the network. However as stated above, ExtremeWare clearly discloses that the switches (end devices) senses when a master/slave transition occurs and flush FDB entries (10-17). In a similar fiend of endeavor, Jain discloses;

upon a detection of a network failure, to notify the plurality of end devices to flush the forwarding database (propagation of notifications of topology change to only those parts of the network which are affected by the failure and trigger partial flushing of the database, abstract and col14 lines 55-65 and figure 8 and col8 lines 24-45) and

rebroadcast for a new path over the network (relearn the set of addresses associated with the ports affected by the change, abstract). It would have thus been obvious to incorporate the concept of notifying a topology change due to failure in the network, such as the transition from master to slave of a switch due to failure, to a end device so that the end device may flush its FDB and relearn another path as disclosed by Jain into a system which utilizes ESRP as disclosed by ExtremeWare, so that an end device may properly and correctly transmit data through a network which provides a standby protocol for fault situations.

Regarding claim 2, 11, ExtremeWare discloses said VLAN is part of an Ethernet network (Ethernet switches, 1-1).

Regarding claim 4, ExtremeWare discloses wherein said first and second switches are Layer 2 switches. (layer 2 services, 10-2).

Regarding claim 5, 14, ExtremeWare discloses wherein the plurality of end devices comprises Layer 3 devices (layer 3 routing, page 10-16)

Regarding claim 6, 7, 15, 16, ExtremeWare discloses wherein at least one of the plurality of end devices utilize ARP (switch supports ARP, 11-5).

Regarding claim 8, 9, 17, and 18, ExtremeWare discloses said network failure is detected using ping track (ESRP ping tracking, 10-4-10-5)/port track (if no active ports remain, the switch automatically relinquishes master status and remains in standby mode, 10-4).

Regarding claim 19, ExtremeWare discloses a maximum of four switches participate in providing redundant services to a single VLAN, and that one switch is the Master while the other switches are in standby mode (10-2, 10-11).

Regarding claim 21, ExtremeWare discloses the plurality of end devices comprise one of non-ESRP aware devices and non-ExtremeWare manufactured devices (ESRP can be used with switches from other vendors, 10-2).

Response to Arguments

6. Applicant's arguments with respect to claims 1-12, 14-21 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
8. Bales (US 7246168)
9. Saleh et al. (US 20030179700)
10. Virgile (US 6539022)
11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NGUYEN NGO whose telephone number is (571)272-8398. The examiner can normally be reached on Monday-Friday 7am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kwang Yao can be reached on (571)272-3182. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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